

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERNESTO MAGAT,

Defendant.

Case No. [14-cr-00627-SI-1](#)

**ORDER DENYING DEFENDANT
ERNESTO MAGAT'S MOTION FOR
COMPASSIONATE RELEASE**

Re: Dkt. No. 349

Defendant Ernesto Magat has filed a *pro se* motion for compassionate release. For the reasons set forth below, the Court DENIES defendant's motion. Defendant may renew his motion if his health deteriorates.

DISCUSSION

On March 13, 2017, after a four-week trial, defendant Ernesto Magat was convicted of conspiracy to commit wire fraud, 14 counts of wire fraud, and aggravated identity theft. The Court sentenced Mr. Magat to 48 months in prison. Mr. Magat is currently serving his sentence at FCI Mendota in Mendota, California, and his projected release date is August 24, 2021. Mr. Magat is 38 years old.

Defendant has filed a motion seeking compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). As amended by the First Step Act, that statute provides:

[T]he court, upon motion of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment . . . after considering the

factors set forth in section 3553(a) to the extent that they are applicable, if it finds that –

(i) extraordinary and compelling reasons warrant such a reduction

...

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Id.

Defendant asserts that he has shown “extraordinary and compelling” reasons for compassionate release because he has sleep apnea and he is concerned about contracting COVID-19 while incarcerated. Defendant requests that the Court reduce his sentence to time-served and that he be allowed to serve the remainder of his custodial sentence on home confinement living with his fiancé.

The government objects that Mr. Magat has not shown “extraordinary and compelling” reasons to warrant compassionate release. The government notes that defendant does not provide any details about his condition, and that current guidance from the Centers for Disease Control does not list sleep apnea as a condition that places people at greater risk for developing complications from COVID-19. *See generally* CDC, *People Who Are at Higher Risk of Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html> (last visited June 29, 2020). The government also notes that defendant is relatively young and that FCI Mendota has had no reported cases of COVID-19.

The Court has carefully reviewed the parties’ papers and concludes that compassionate release is not warranted. The Court is not unsympathetic to the concerns defendant has raised about the spread of COVID-19 in the federal prison system. However, the Court finds it encouraging that there have been no reported cases at FCI Mendota. In addition, aside from a diagnosis of sleep apnea, Mr. Magat does not complain of any serious health condition. Mr. Magat has not shown that his sleep apnea is “a serious physical or medical condition . . . that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he . . . is not expected to recover.” *See* U.S.S.G. § 1B1.13 cmt. N.1(A)(ii)(I); *see also* Order Denying Renewed Motion to Modify Sentence, *United States v. Taylor*, Case No. 17-cr-

00191-JST (N.D. Cal. June 24, 2020) (denying motion filed by 57-year-old defendant with sleep apnea and high cholesterol because, *inter alia*, these conditions “do not appear on the CDC’s list of underlying medical conditions that create a higher risk”) (filed at Dkt. No. 352, Ex. A). Accordingly, the Court DENIES defendant’s motion.

Defendant’s motion is denied without prejudice to renewal in the event his health significantly deteriorates.

IT IS SO ORDERED.

Dated: June 30, 2020



SUSAN ILLSTON
United States District Judge